IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14531 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

D.H.PATEL

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Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR GK RATHOD for Respondent No. 1

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 03/05/2001

C.A.V. JUDGEMENT

1. Gujarat State Road Transport Corporation, petitioner (hereinafter referred to as `the Corporation') has filed this petition challenging the judgment and award dated 4th March, 1993, passed by the Labour Court, Godhra in Reference (LCG) No.282 of 1991. The Labour

Court by its impugned judgment and award pleased to reinstate the respondent-workman in his original post with continuity of service without backwages.

2. The facts giving rise to this petition are as under:

2.1 The respondent was working as a bus conductor in the Corporation. It has been stated in the order of the competent authority that prior to this incident the past record of the respondent was also not good. The competent authority have warned the respondent for 4 times, imposed penalty for 13 times, 17 times his increments were stopped and for 2 times reduced the basic salary of the workman. So in all 36 to 37 times past defaults for that Corporation gave enough opportunity to improve upon the working of the respondent and all these times the Corporation did not impose the punishment of dismissal in this behalf.

Present Controversy:

3.1 The respondent was employed as a conductor at Dahod Depot of the petitioner Corporation. While on duty in a bus running between Dahod to Rachharda on 19th February, 1991, he was found to have committed following acts of misconducts when his bus was checked at Kathwada.

(i) The respondent workman had received Rs.2.50 from a passenger travelling from Zalat to Anas without issuing tickets to him.

(ii) Had collected Rs.3/- from a passenger going from Zalat to Rachharada without giving tickets.

(iii) Had collected Rs.6/- from a group of two passengers travelling from

(iv) Did not issue tickets to yet another passenger travelling from Zalat to Kanthla Ashram through collected Rs.1.25/-.

(v) Collected Rs.4/- but did not issue tickets to one more passengers.

(vi) The workman also refused to give his statement to the Checking party.

3.2 In view of the same, a chargesheet dated 21.2.1991 was issued against the respondent. The said chargesheet has been produced on record at Annexure `A'

to the petition.

3.3 Thereafter, respondent-workman replied to the said chargesheet however the competent authority did not found the satisfactory reply and thereafter a regular departmental enquiry was conducted against the respondent in compliance of principle of natural justice. The Inquiry Officer found the charges levelled against the respondent to be proved and the respondent-workman was dismissed from service by an order dated 3.5.1991 passed by the Competent Authority of the petitioner Corporation. While dismissing the respondent-workman from service of the Corporation, the Competent Authority has taken into consideration statements of some of the passengers of the bus where it has been alleged that he has collected the fares but did not issue tickets to the passengers. The Competent Authority has also considered the statement of respondent-employee which had been recorded on 19.2.90. He was examined before the Competent Authority and he has answered all these aspects before the Competent Authority. The Competent Authority considered the same and thereafter passed the impugned order of dismissal.

3.4 The respondent-workman thereafter invoked the jurisdiction of Labour Court, Godhra vide Reference (LCG) No.282 of 1991 seeking reinstatement with backwages. The respondent-workman has filed statement of claim at Exh.3 and Corporation has filed reply at Exh.6. Before the Labour Court it was stated that the Corporation considered the departmental enquiry as per the provisions of the appeal and procedural rules and also compliance of rules of natural justice and therefore the Labour Court ought to have rejected the reference in this behalf. Before the Labour Court, the respondent-workman did not challenge the legality and validity of the departmental enquiry. The respondent-workman also did not lead any further evidence before the Labour Court in this behalf. Before the Labour Court the Corporation contended that in view of clear misappropriation of money by the respondent-workman he is found completely negligent in his duty and therefore the competent authority was justified in imposing punishment of dismissal. The Competent Authority passed the order in which it has been clearly stated that there were 36 to 37 past defaults and in view of this previous record also the Labour Court ought not to have interfere with the order of dismissal passed by the competent authority.

3.5 The Labour Court by its impugned judgment and award dated 4.3.93 pleased to accept the reference of the respondent-workman and directed the Corporation to

reinstate the respondent-workman with continuity of service without backwages.

4. Learned advocate for the Corporation has tried to assail the aforesaid judgment and award of the Tribunal on following grounds.

4.1 Learned advocate for the Corporation submitted that the misconduct alleged against the workman was of misappropriation of money and the workman actually received the fare money is a fact established before the Labour Court. It is submitted that there were only 8 passengers in the bus when it was checked, and out of them 5 passengers were found without tickets although the respondent had collected amounts of fare from them. He has relied upon the statements of passengers.

4.2 It was further submitted that the Labour Court having found the inquiry to be legal and valid and the charge having been established was not justified in interfering with the order of punishment in exercise of its powers under Section 11-A of the Industrial Disputes Act (hereinafter referred to as `the Act'). It is further submitted that the reasonings of the Labour Court that passengers were lying as they would otherwise have to pay fine on the ticket amount is errorneous and based on conjecturer and surmises.

4.3 It was further submitted that the Labour Court could not have relied on the medical certificate produced by the workman. The certificate has no relevance to defend the charge of misconduct, much less it is dated 27.2.91 and related to his so-called illness on 18.2.1991 i.e. the previous day to the day on which the incident took place. The workman was on duty on 18.2.91 and he preferred it on whole day without any complaint is a circumstance falsifying the say of the respondent. It is further submitted that it was also clear from the records that the workman had closed the way-bill and the closing was irregular and that irregularity has been admitted by the workman in the proceedings before the Inquiry Officer.

4.4 It was, therefore, submitted that the case of misappropriation by the respondent-workman is a serious misconduct which is duly established and therefore the order passed by the Competent Authority was just and proper and was not liable to be interfered with by the Labour Court. It was further submitted that the Labour Court has committed an error in interfering with the punishment on the ground that it was disproportionate to

the misconduct alleged. It was further submitted that the charge was of misappropriation is a grave charge in nature and deserves to invite punishment of dismissal when it is established. It was further submitted that the Competent Authority has duly considered past record of the workman which consists of as many as 36 defaults while arriving at a decision as to the penalty. It was submitted that the Labour Court has manifestly erred in disregarding the past record of the workman and choosing to interfere with the penalty on the ground of proportionality and harshness. It was further submitted that the petitioner is a public Corporation and can ill-afford to retain a conductor habituated the misconduct of misappropriation by directing reinstatement by the Labour Court amounts to putting premium on dishonesty.

4.5 Learned counsel further submitted that the Labour Court should have seen that lenient punishment in the past had not resulted into improvement on the part of the respondent and as such power under Section 11-A of the Act ought not have been invoked in this case. He further submitted that the Labour Court should have seen that looking to the charge levelled and proved against the respondent-employee, the punishment imposed is an appropriate punishment. The learned Counsel further submitted that the Labour Court should have seen that a conductor has to deal with public money and it is a post of raising main source of revenue for Corporation and as the respondent-employee has been found in the habit of misappropriating the petitioner-Corporation's revenue he should not have been ordered to be reinstated in service. She has submitted that the burden to prove that the case deserves invoking power under Section 11-A of the Act is not discharged and relevant factors in exercise of the said power are not at all considered.

5. On the other hand, Mr.G.K.Rathod, learned advocate for the respondent has tried to support the reasonings of the Labour Court in this behalf. He has submitted that the Labour Court has properly exercised discretion in reinstating the respondent-employee in this behalf. He stated that there was question of Rs.12/- of misappropriation and therefore the order of the Labour Court reinstating the respondent-employee is legal and valid. He has alternatively submitted that even if this Court comes to the conclusion by allowing the petition then instead of setting aside the award the Court may impose lesser punishment of stopping of increment in this behalf.

5.1 He has further submitted that the respondent-employee has put a 21 years of service prior to dismissal and after the order of dismissal in 1991 and in view of the judgment and award of the Labour Court he has been reinstated on 21.5.93 and from the year 1993 till today he has worked with the service of the Corporation. He has further submitted that if this Court comes to the conclusion that the employee has committed serious misconduct and if court comes to the conclusion that the judgment and award of the Labour Court required to be interfered that even then he submitted that this Court under Articles 226 and 227 of the Constitution of India may not set aside the award of the Labour Court granting reinstatement to the employee. He submitted that total 28 years service rendered by the employee in this behalf and if this petition is allowed then it will amount of economic death of the employee in this behalf.

6. Learned counsel for the Corporation submitted that the State Road Transport Corporation is constituted under the Sec.3 of the Road Transport Corporations Act, 1950. The Corporation has been established to offer advantages to the public, trade and industry by the development of road transport and for the desirability of co-ordinating any form of road transport with any other form of transport, and also for the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein. She has referred the certain sections of the Road Transport Corporations Act, 1950, which reads as under:

Section 4 of the Act provides for incorporation. Section 5 of the Act provides for management of corporation and board of directors. Section 44 of the Act provides for power to make rules. Section 45 of the Act provides for power to make regulations.

Under Section 45 the Corporation has framed regulations which is known as Gujarat State Transport Employees Service Regulations.

Regulation 1 provides that these regulations may be called the "Gujarat State Transport Employees' Service Regulations".

Regulation 80 of the Corporation reads as under:

"The Corporation may specify the acts of misconduct or omission which shall be liable to

be treated as "acts of misconduct" or "minor lapses or delinquencies" and also prescribe a procedure for dealing with cases of acts of misconduct and minor lapses and delinquencies and shall appoint appropriate authorities to impose punishments and to hear appeals or order disciplinary action."

6.1 In view of the provisions contained in Regulation 80 of the Gujarat State Transport Employees Regulations, the Corporation has framed Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees.

Regulation 3 provides that there shall be two clauses of offences:

(a) Acts of misconduct and

(b) Minor lapses and delinquencies.

(ii) of clause 3 provides that acts of misconduct are those which have been specified in Schedule `A' with such modifications as may be specified by the Corporation from time to time for which the maximum penalty is as prescribed in Clause 7, according to the gravity of the misconduct.

(iii) of clause 3 provides that minor lapses and delinquencies are those included in Schedule `B' with any modification that would be effected by the administration from time to time which may result in warning, reprimand and fines upto the limit prescribed in Clause 7.

Clause 7 provides the punishments may be awarded for good and sufficient reasons, including breaches of any rules of conduct, or for committing any of the offences mentioned in the Schedules, according to the gravity of the each case. The same are dealing with minor lapses and delinquencies and acts of misconduct.

Schedule A of the Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees provides acts of misconduct.

Clause 7 of the said Schedule provides as under:

"(a) Failure, without reasonable cause, on the part of Conductor to issue any ticket and thereby

permitting ticketless travel and non-issue of ticket to a passenger by a Conductor after recovery of fares, or failure to issue a ticket to a passenger within the time prescribed in the orders of the Corporation.

(b) Failure on the part of checking staff to report offences on the part of Conductors for ticketless travel or for non-issue of tickets."

Clause 11 of the said Schedule provides for gross negligence resulting in serious loss to the Corporation or inconvenience to the public or both.

Clause 12 of the said Schedule provides for (a) Theft (b) Fraud, dishonesty or misappropriation in connection with the business or the property of the Corporation.

Clause 23 of the said Schedule provides for collecting money within the premises or vehicles of the Corporation except as sanctioned by any law for the time being in force or with the permission of the Competent Authority.

Clause 27 of the said Schedule provides for repeated or continued negligence or neglect of work.

Clause 34 of the said Schedule provides for excess over Rs.25/- found with a conductor without proper explanation or repeated excesses of smaller amounts found with a Conductor.

Clause 35 of the said Schedule provides for Under-issue of tickets i.e. issue of tickets for less than the actual distance travelled by a passenger and failure on the part of a Conductor to maintain records in the proper manner.

Schedule B provides for Minor lapses and Delinquencies.

6.2 On basis of this, the learned advocate for the Corporation stated that when act of employee conductor amounts to dishonesty or fraud and when workman is disloyal to the Corporation and when his act is falling within any of the above clauses it will amount to a serious misconduct and for that the Corporation/Competent Authority is entitled to dismiss the employee from the

service. It has been stated that the employee is engaging in corruption activities and misconduct is proved then Labour Court has unnecessarily shown a sympathy to the workman by reinstating him in the service.

6.3 Learned advocate for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of U.P.State Road Transport Corporation Vs. A.K. Parul reported in (1998) 9 SCC 416. She has relied upon another judgment of the Hon'ble Apex Court in the case of Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.) Etc. Vs. Secretary, Sahakari Noukarara Sangh Etc., reported in 2000 AIR Supreme Court Weekly page 3439 particularly the Hon'ble Supreme Court observed as under:

"Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari, (1996) 2 SCC 714) : (1996 AIR SCW 1309: AIR 1996 SC 1249:1996 Lab IC 1056). In U.P.State Road Transport Corporation v. Basudeo Chaudhary, (1997) 11 SCC 370 this Court set aside the judgment passed by the High Court in a case where a conductor serving with the U.P.State Road Transport Corporation was removed from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs.65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering Rs.5.35 per head and also by making entry in the way bill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. v. Kala Singh, (1997) 6 SCC 159: (1997 AIR SCW 2625: AIR SC 2661: 1997 Lab IC 2649), this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk centres where there were less fat contents. The Court held that "in view of proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the

power under Section 11-A of the I.D. Act to grant relief with minor penalty."

"In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent-workman with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the Management."

"In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

6.4 Learned advocate has further relied upon the Division Bench judgment of this Court in the case of G.S.R.T.C. Vs. Kacheraji Motiji Parmar reported in GLR 1993(1) 302 particularly para 5 and 6 of that judgment and the judgment of this Court in the case of Mihir Textile Ltd. Vs. Narayansing Layaksingh reported in 1993(1) GCD 147 particularly para 23.

6.5 Learned counsel for the Corporation has relied upon judgment of this Court in the case of Parikshatbhai Madhavbhai Patel Vs. Division Controller, G.S.R.T.C. Surat reported in 2000(1) G.L.H. 31. In that case, appellant-employee Parikshatbhai Madhavbhai Patel was working as conductor with the Corporation. It was a case of the Corporation that when the appellant was on duty on Olphad-Punit route under Surat Depot, his bus was checked and it was found that though the appellant had collected amount of fare from certain passengers, he had not issued tickets nor he had closed way bill. A report was made and an inquiry was conducted against him wherein he was found guilty. He was, therefore, dismissed from service with effect from November 14, 1995.

6.5(a) Being aggrieved by the order of dismissal the appellant approached the Labour Court and in Reference (LCS) No. 190 of 1996. The Labour Court, Surat partly allowed the Reference by an award dated January 31, 1997 and directed the Corporation to reinstate the workman in service on the post of helper or peon without backwages.

6.5(b) Being aggrieved and dissatisfied with the award passed by the Labour Court, the Corporation preferred the petition. The learned Single Judge of this Court by the judgment impugned in the petition observed that while inflicting punishment of dismissal, the competent authority took into consideration the fact that the workman was involved in similar kind of misconduct on earlier occasions also and was punished in past. He also observed that once the workman was dismissed from service by the Disciplinary Authority but the Appellate Authority took a lenient view and substituted order of dismissal by imposing lessor punishment. In spite of such leniency, again, the appellant committed similar misconduct. In the opinion of the learned Single Judge, therefore, the Labour Court had not exercised its discretion in accordance with law and had exceeded the jurisdiction. The learned single Judge observation which has been quoted in para 4 of the judgment (of Division Bench Judgment) reads as follows:

> "I have considered the rival contentions. It is the settled legal position that it is not for the Labour Court to interfere with the punishment unless the same is found to be disproportionate to the guilt. The workman was perhaps labouring under the wrong impression that simply because he does not challenge the correctness of the domestic enquiry, he will be dealt with lightly. In view of this, the learned Judge, in my view, has exceeded the jurisdiction in interfering with the order of punishment."

> "Accordingly, the petition was allowed and the order passed by the Labour Court was set aside by making the Rule absolute."

6.5(c) Being aggrieved and dissatisfied with the aforesaid judgment, the employee of the Corporation preferred LPA before this Court. The Division Bench of this Court after considering the judgment of the Hon'ble Apex Court in the case of The Indian Iron and Steel Co. Ltd. Vs. Their Workmen (AIR 1953 SC 130 at p.138), in para 12-A the Court observed as under:

> "In our opinion, in the light of the law laid down by the Apex Court, it cannot be said that the powers of the Labour Court under Section 11-A of the Act are absolute or unqualified. The Labour Court can exercise the said power only when it is satisfied that the dismissal was not justified. In the facts and circumstances, the

action of dismissal of workman cannot be said to be unjustified and hence in our opinion, the learned single Judge was right in holding that the Labour Court exceeded its jurisdiction in passing the award impugned in the petition."

In para 20 of the said judgment the Court observed as under:

"These facts in our opinion, ought to have been taken into consideration in their proper perspective by the Labour Court. Power under Section 11-A of the Act ought to have been exercised with circumspection in the light of misconduct in the case on hand and as also misconduct in the past. By not doing so, the Labour Court exceeded jurisdiction vested in it and the learned single Judge has rightly interfered with the said award by setting aside reinstatement of the workman."

6.6 In view of this judgment, it was submitted by the learned counsel for the Corporation that the Labour Court has not properly exercised its jurisdiction in this behalf and exceeded its jurisdiction. She has further submitted that this judgment is squarely applies to this case and, therefore, the petition of the Corporation should be allowed in this behalf.

6.7 Learned counsel has also relied upon judgment of this Court in the case of Chanduji Sendhaji Khant Vs. Gujarat State Road Transport Corporation reported in 1996(1) GLR 84. In para 9 the Learned Single Judge observed as under:

"Keeping in view the aforesaid precincts of judicial review under Arts. 226 and 227 of the Constitution of India, while examining the order passed by the Industrial Tribunal, I am of the opinion that under the facts and circumstances of the present case, exercise of discretion by the Tribunal cannot be sustained. It has nowhere recorded its satisfaction about the fact that punishment imposed upon the petitioner-workman was disproportionate to the guilt proved which is condition precedent for exercising discretion under Sec.11-A of the Act. The only ground which weighed with the Tribunal in ordering reinstatement is that with the current increase in cost of living and chances of not getting any other job would render the family of the

petitioner-workman in difficult situation and as the punishment should be reformative, the workman should be given one more chance to mend his conduct on humanitarian grounds. To say the least, these general grounds will be available and applicable in all cases of dismissal of any employee irrespective of gravity of misconduct or technical nature of misconduct for which punishment has been imposed. There is nothing to show how the workman concerned would be affected and to what extent even if socio-economic conditions are to be taken into consideration for the purpose of imposing punishment though as would be discussed presently, is not abstract requirement. In this case, the Tribunal has found inquiry to be fair and in accordance with law, and found misconduct proved which is of carrying passengers without tickets implying dishonest conduct on the part of the conductor to retain with him the amount collected by carrying passengers without tickets affecting revenue of a body of a public nature, which cannot be equated with petty theft once committed in momentary weakness on account of socio-economic condition of the concerned workman, but is serious misconduct on account of nature of criminal breach of trust. It has also come on record that there is history of past 77 misconducts behind the workman. Therefore, the impugned order neither records satisfaction about the punishment being not justified being disproportionate to the misconduct proved nor does it give any relevant reasons for substituting lesser punishment. Exercise of discretion under the circumstances cannot be sustained even on limited scrutiny permissible under law and conclusion to that extent arrived at by the Tribunal must be held to be perverse."

In para 14 of the said decision, the learned Single Judge has observed as under:

"Therefore, if viewed from the seriousness to which this Court in its decision referred to above in Jamnadas Becharbhai's case (supra) about the misconduct proved in the present case and fact of consistent past bad record on that account and there being nothing on record to suggest socio-economic condition of workman concerned which might have tempted him to indulge in this adventurism as momentary temptation and

not part of regular habit, renders the whole approach to the exercise of discretion by the Tribunal capricious, arbitrary and on extraneous considerations."

6.8 Learned counsel has also relied upon the decision of this Court in the case of Gujarat State Road Transport Corporation Vs. Bhikabhai Manjibhai reported in 1997(1) GLR 416. In para 10 the learned Single Judge has observed as under:

"In the instant case, the Labour Court has accepted the case of the Corporation and the workmen is held guilty but by exercising powers under Sec.11-A of the Act, directed the Corporation to re-employ the workman without considering the fact that in the past, the workman was found guilty in other cases and though opportunity was given to improve, he has again indulged in the same activity. In the circumstances, the order passed by the Labour Court cannot sustain."

6.9 Learned counsel has also relied upon another decision of this Court in the case of Shantilal M.Shah Vs. Dena Bank & Others reported in 1997(1) G.L.H. 942. In para 8 on page 948 the Court observed as under:

"The petitioner filed appeal against the order of dismissal and before the appellate authority he has not raised the point that no financial loss was caused to the Bank. The petitioner cannot be allowed to raise a new point before this Court. The learned counsel for the petitioner has failed to show that no financial loss has been caused to the Bank. Apart from this, even if we proceeded on the footing that no financial loss has been caused to the Bank, and whatever loan advanced by the Bank could have been recovered from the borrowers, the question is whether the petitioner should have been regard, reference may have to the decision of the Supreme Court in the case of Municipal Committee, Bahadurgarh Vs. Krishna Behari reported in 1996(2) SCC 714. In that case the respondent was dismissed from services of the Bank, on his conviction under Section 486 I.P.C. by the criminal court for committing forgery. Against the order of dismissal from service the respondent therein filed appeal. The Director of Local Bodies who, while upholding the correctness of the action, reduced the punishment to stoppage

of four increments and has also directed that the period during which the respondent was out of service should be treated as extraordinary leave. The Apex Court, while dealing with the appeal of the employer, held that the respondent has been convicted of a serious crime, and in a case of such nature indeed, in cases involving corruption there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The Apex Court further observed that the amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

6.10 Learned counsel for the petitioner has relied upon recent judgment of this Court in the case of Gujarat State Road Transport Corporation Vs. R.S.Prajapati reported in 2001 LAB I.C. 618. In that case this Court considered very Corporation. The learned Single Judge has relied upon the earlier Division Bench decision of this Court in the case of G.S.R.T.C. Vs. Jamnadas Becharbhai, 1982 G.L.H. 1057 and also judgment of Division Bench of this Court in the case of G.S.R.T.C. Vs. Kachraji Motiji Parmar, 1993(1) G.L.R. 302. It may be noted that in that case the advocate for the employee has relied upon the judgment of the learned Single Judge in the case of G.S.R.T.C. Vs. Parshottam Premji Tank reported in 2000(2) G.L.H. 258, when the learned Single Judge has confirmed with the aforesaid judgments of the learned Single Judge in Para 12 the learned Single Judge has observed as under:

"There is no difficulty in following the said decision but at the same time we have to consider previous two decisions referred hereinabove which are the decisions recorded by the Division Bench of this Court, whereas the third decision referred to by the learned advocate for the respondent has been rendered by the learned Single Judge of this Court. Therefore, the principle enunciated in the former two decisions rendered by the Division Bench of this Court, will have preference over the third decision which has been rendered by the learned single Judge."

In para 13 on page 621 the Court has observed as under:

"Now, in this case, it can be reasonably inferred

in the present case that the respondent has put the petitioner corporation to a monetary loss. Moreover, the extreme punishment has not been inflicted but the department has considered it just and proper to retain the respondent in service and to impose such punishment with a view to provide an additional opportunity to the respondent to show improvement. At the same time, strict action is required to be taken by a public body with a view to set example so that the respondent may not repeat the said misconduct. Same way, it may also deter other employees in a public body committing or intending to commit similar faults. In that view of the matter, punishment imposed by the petitioner authority cannot be treated harsh and excessive considering the default of the petitioner in the present case and considering the past conduct as well as the conduct subsequent to the event in question."

6.11 The learned counsel for the petitioner has relied upon the judgment of this Court in the case of G.S.R.T.C. Vs. Rameshbhai D.Patel in Special Civil Application No.3244 of 1992 decided on 8.11.2000 by this Court (Coram:K.M.Mehta,J.). In that case this Court considered the judgment of the Hon'ble Supreme Court in the case of U.P.State Road Transport Corporation Vs. A.K.Parul reported in (1998) 9 SCC 416, judgment of the Hon'ble Apex Court in the case of Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.). Etc. Vs. Secretary, Sahakari Noukarara Sangh, Etc., reported in 37/2000 AIR Supreme Court Weekly 3439 and Division Bench judgment of this Court in the case of G.S.R.T.C. Vs. Kacheraji Motiji Parmar reported in 1993(1) GLR 302 and also Division Bench judgment of this Court in the case of Mihir Textiles Ltd. Vs. Narayansing Layaksingh reported in 1993 (1) GCD 137. This Court considered the provisions of Sec.11-A of the Act and wherein the Tribunal has granted reinstatement the workman in similar situation the Court held that Tribunal has failed to exercise jurisdiction under Sec.11-A of the Act wherein Tribunal was pleased to direct the reinstatement of the workman and to consider the service of the workman as continuous. The Court held that when there is a case of misappropriation of funds of the Corporation, the order of the Tribunal requires to be quashed and set aside. There also the Court considered the provisions of Sec.11-A of the Act in view of all these decisions which are referred.

6.12 She has also relied upon judgment of this Court in the case of Chanduji Sendhaji Khant Vs. G.S.R.T.C. reported in 1996(1) GLR 84 particularly para 9.

7. Learned advocate for the respondent has relied upon judgment of the Hon'ble Apex Court in the case of G.S.R.T.C. Vs. U.A.Malek reported in 2001(1) Labour Law Journal p.180. In that case Shri U.A.Malek respondent was employed as conductor and he was charged with misappropriation of the money of the Corporation by not issuing tickets to the passengers on certain dates. Thereafter, an enquiry was held and he was dismissed from service. The respondent raised a dispute under the Industrial Disputes Act, 1947 and the Labour Court allowed the reference partially directing the appellant to provide employment to the respondent afresh making it clear that he will not be entitled to any back wages. On the matter being carried by way of a writ petition to the High Court against the said award, the same having been dismissed. Being aggrieved and dissatisfied with the said judgment, the Corporation filed appeal before the Hon'ble Apex Court. The Hon'ble Apex Court in para 2 of the said judgment observed as under:

> "It is now brought to our notice that the respondent has been in service in the establishment of the appellant from the year 1982 onwards pursuant to the award of the Labour Court. In the circumstances, we do not think it would be appropriate to upset the present state of affairs when the respondent has been in employment for such a long period. Appeal is, therefore, dismissed."

7.1 Learned advocate for the respondent has also relied upon the judgment of the Hon'ble Apex Court (Three Bench Judgment) in the case of Asstt.General Manager, SBI Vs. Thomas Jose and Another reported in 2000 Supreme Court Cases (L&S) 830. In that case Mr.Rathod, learned advocate for the respondent stated that in that case Mr.Thomas Jose-respondent was employed of the State Bank of India and he was working as typist-cum-clerk and cash officer. He made a withdrawal of Rs.3000 from the savings bank account of a third party with the Bank. He did so by forging the signature of the account holder on the withdrawal form. He appropriated the amount for his personal use. In the inquiry the respondent admitted that he had withdrawn Rs.3000 from the said account. A chargesheet was issued to the first respondent wherein he again admitted his guilt. The enquiry officer found the

charge against the first respondent proved. Consequent upon this finding, amounting to gross misconduct in terms of the Sastry Award and the Desai Award governing the Bank, the first respondent was dismissed from the Bank's service. His appeal was dismissed. An industrial dispute was raised. The Industrial Tribunal, acting thereon, found that the misconduct was proved but that the punishment of dismissal was too harsh. It, therefore, ordered reinstatement, as a Typist Clerk, without back wages. The Bank filed a writ petition in the High Court of Kerala impugning the Industrial Tribunal's award. The writ petition was dismissed. The appeal against that order was dismissed. The Division Bench of the High Court relied upon the judgment of this Court in Scooters India Ltd. Vs. Labour Court, Lucknow and held that the Tribunal was right in affording an opportunity to the first respondent to reform himself and prove to be a disciplined and loyal employee. Being aggrieved and dissatisfied with the aforesaid judgment, the SBI filed an appeal before the Hon'ble Supreme Court by way of Special Leave Petition. After considering the Division Bench judgment of the High Court in para 3 the Hon'ble Supreme Court has observed as under:

"In the aforestated case, in more or less similar circumstances, this Court declined to interfere with the view taken by the Labour Court that an errant workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of Scooters India Ltd. There is, in our view, a vital difference between an undertaking such as Scooters India Ltd. and the bank. A bank deals with public moneys. Misappropriation by an employee of a bank is misappropriation of public moneys and must be treated very differently. Misconduct such as this cannot be treated as lightly as it has been done. We think that the appropriate order should at least have been of reinstatement without backwages plus a direction that the first respondent would not be entitled to any increments for a substantial period with all the cumulative consequences of such an order. That is the order that we propose to pass. The appeal is allowed. The order under appeal is modified so that the first respondent is reinstated in the appellant Bank's service but without back wages and without any increments for a period of ten years, with all cumulative consequences. The period of ten years shall run from today."

8. I have considered the rival submissions of the learned advocates for the parties in this behalf. In my considered opinion looking to the past conduct of the employee where Corporation has earlier imposed penalty for 13 times, 17 times his increments were stopped and for 2 times reduced the basic salary of the workman. So in all about 36 to 37 times past defaults for that Corporation gave enough opportunity to improve upon the working of the respondent and all these times the Corporation did not impose the punishment of dismissal in this behalf. However, in view of all these aspects and the powers vested under Sec.11(A) of the Act, the Tribunal has not properly exercised the jurisdiction vested under Sec.11(A) of the Act. In fact, the Tribunal has failed to exercise jurisdiction under Section 11(A) of the Act and was pleased to direct the reinstatement of the workman and to consider the service of the workman as continuous. In my view, the Tribunal has unnecessarily shown sympathy to the workman inspite of the fact that there is a clear case of misappropriation of funds of the Corporation. In my view, the order of the Tribunal is required to be quashed and set aside. The petition is, therefore, allowed. The order of the Tribunal dated 4th March, 1993, passed by the Presiding Officer, Labour Court, Godhra, in Reference (LCG) No.282 of 1991, giving reinstatement to the workman is bad in law and is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(K.M. Mehta, J.)

syed/